

LEGISLATURE OF NEBRASKA
NINETY-NINTH LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 506

Introduced by Erdman, 47; Baker, 44; Burling, 33; Byars, 30;
Combs, 32; Connealy, 16; Cudaback, 36;
Cunningham, 40; Engel, 17; Fischer, 43; Flood, 19;
Friend, 10; Hudkins, 21; Jensen, 20; Kremer, 34;
Langemeier, 23; Louden, 49; Mines, 18; Redfield, 12;
Schrock, 38; Smith, 48; Stuhr, 24; Stuthman, 22; at
the request of the Governor

Read first time January 14, 2005

Committee: Judiciary

A BILL

1 FOR AN ACT relating to the death penalty; to amend sections
2 29-2532, 29-2533, 29-2542, 29-2543, and 29-2544, Reissue
3 Revised Statutes of Nebraska, and section 29-2524,
4 Revised Statutes Supplement, 2004; to change the mode of
5 inflicting the death penalty; to harmonize provisions; to
6 provide severability; to repeal the original sections;
7 and to declare an emergency.
8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 29-2524, Revised Statutes Supplement,
2 2004, is amended to read:

3 29-2524. Nothing in sections 25-1140.09, 28-303, 28-313,
4 and 29-2519 to 29-2546 and sections 7 and 8 of this act shall be in
5 any way deemed to repeal or limit existing procedures for automatic
6 review of capital cases, nor shall they in any way limit the right
7 of the Supreme Court to reduce a sentence of death to a sentence of
8 life imprisonment without parole in accordance with the provisions
9 of section 29-2308, nor shall they limit the right of the Board of
10 Pardons to commute any sentence of death to a sentence of life
11 imprisonment without parole.

12 Sec. 2. Section 29-2532, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 29-2532. (1) (a) The mode of inflicting the punishment of
15 death, in all cases, shall be cases in which the crime for which
16 the punishment of death has been imposed was committed prior to the
17 effective date of this act, shall be, at the option of the
18 convicted person being punished and as provided in subdivisions
19 (1) (b) and (c) of this subsection, (i) by causing to pass through
20 the body of the convicted person a current or currents of
21 electricity of sufficient intensity to cause death, and the
22 application of such current or currents shall be continued until
23 such convicted person is dead or (ii) by intravenous administration
24 of a lethal quantity of an ultra-short-acting barbiturate in
25 combination with a chemical paralytic agent and potassium chloride,
26 or other equally effective substances, sufficient to cause death.

27 (b) If the convicted person being punished was sentenced
28 to death prior to the effective date of this act, then the warden

1 of the Department of Correctional Services facility designated by
2 the Director of Correctional Services to carry out the sentence of
3 death, or his or her designee, shall provide written notice to the
4 convicted person of the requirement to choose a mode of inflicting
5 the punishment of death set forth in this section within thirty
6 days after the effective date of this act. Such notice shall state
7 that a failure to choose shall result in the punishment of death
8 being inflicted pursuant to subdivision (1)(a)(ii) of this
9 subsection. If a choice is made by the convicted person, it shall
10 be made in writing and received by the warden or his or her
11 designee within thirty days after receipt by the convicted person
12 of the warden's written notice.

13 (c) If the convicted person being punished was sentenced
14 to death on or after the effective date of this act, then the
15 warden of the Department of Correctional Services facility
16 designated by the Director of Correctional Services to carry out
17 the sentence of death, or his or her designee, shall provide
18 written notice to the convicted person of the requirement to choose
19 a mode of inflicting the punishment of death set forth in this
20 section within thirty days after the sentence has been affirmed by
21 the Nebraska Supreme Court pursuant to section 29-2528. Such
22 notice shall state that a failure to choose shall result in the
23 punishment of death being inflicted pursuant to subdivision
24 (1)(a)(ii) of this subsection. If a choice is made by the
25 convicted person, it shall be made in writing and received by the
26 warden or his or her designee within thirty days after receipt by
27 the convicted person of the warden's written notice.

28 (d) If the convicted person being punished fails to

1 choose as provided in this subsection, the mode of inflicting the
2 punishment of death shall be pursuant to subdivision (1)(a)(ii) of
3 this section.

4 (2) The mode of inflicting the punishment of death, in
5 cases in which the crime for which the punishment of death has been
6 imposed was committed on or after the effective date of this act,
7 shall be by intravenous administration of a lethal quantity of an
8 ultra-short-acting barbiturate in combination with a chemical
9 paralytic agent and potassium chloride, or other equally effective
10 substances, sufficient to cause death.

11 (3) The warden of the ~~Nebraska Penal and Correctional~~
12 ~~Complex~~ Department of Correctional Services facility designated by
13 the Director of Correctional Services to carry out the sentence of
14 death, and in case of ~~his~~ such warden's death, sickness, absence,
15 or inability to act, then the deputy warden, shall be the
16 executioner. The ~~+~~ ~~PROVIDED,~~ the warden may in writing specially
17 designate and appoint a suitable and competent person to act for
18 him or her, and under his or her direction, as executioner in any
19 particular case. A crime punishable by death ~~must~~ shall be
20 punished according to the ~~provisions herein made~~ this section and
21 not otherwise.

22 (4) If the Supreme Court of the United States declares
23 that the mode of inflicting the punishment of death under
24 subdivision (1)(a)(i) or (ii) of this section violates the United
25 States Constitution, or if the Nebraska Supreme Court declares that
26 the mode of inflicting the punishment of death under subdivision
27 (1)(a)(i) or (ii) of this section violates the United States
28 Constitution or the Constitution of Nebraska, the mode of

1 inflicting the punishment of death shall be by the other remaining
2 statutory mode of inflicting the punishment of death.

3 Sec. 3. Section 29-2533, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 29-2533. When any convicted person ~~shall be sentenced to~~
6 ~~be electrocuted~~ is punished by death, such punishment shall be
7 inflicted ~~within the walls of the Department of Correctional~~
8 ~~Services adult correctional facility, or within the yard or~~
9 ~~enclosure adjacent thereto,~~ at a Department of Correctional
10 Services facility under the supervision of the warden of such
11 facility and in such a manner as to exclude the view of all persons
12 ~~save~~ except those permitted to be present as provided in sections
13 29-2534 and 29-2535.

14 Sec. 4. Section 29-2542, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 29-2542. If any person escapes who has been convicted of
17 a crime punishable by death, ~~and~~ has been sentenced to ~~be~~
18 ~~electrocuted death, shall escape, and shall not be~~ and has not been
19 retaken before the time fixed for his or her execution, it shall be
20 ~~lawful for the warden~~ the Director of Correctional Services or his
21 or her designee may rearrest such person, or any sheriff or other
22 officer or person ~~to~~ may rearrest such person and return him or her
23 to the custody of the ~~warden of the Nebraska Penal and Correctional~~
24 ~~Complex, who shall thereupon make return thereof to~~ Department of
25 Correctional Services. The director shall then notify the Governor
26 of the state, and the Governor shall thereupon issue a warrant,
27 fixing and appointing a day for the execution. The director shall
28 ensure that the designated warden carries out the execution, which

1 shall be carried into effect by the warden in the same manner as
2 herein provided for the execution of ~~an original~~ a sentence of
3 death.

4 Sec. 5. Section 29-2543, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 29-2543. Whenever any person has been tried and
7 convicted before any district court in this state of a crime
8 punishable by death and under the conviction has been sentenced ~~by~~
9 ~~the court to suffer~~ to death, it shall be the duty of the clerk of
10 the court before which the conviction was had to issue a warrant,
11 under the seal of the court, reciting therein the conviction and
12 sentence directed to the ~~warden of the Nebraska Penal and~~
13 ~~Correctional Complex~~ Director of Correctional Services, commanding
14 ~~him or her to proceed at the time named in the sentence to carry~~
15 ~~the same into execution by causing the person so convicted and~~
16 ~~sentenced to be electrocuted by the passage of an electric current~~
17 ~~through the body until dead~~ the director to cause the death of the
18 convicted person. The clerk shall deliver the warrant to the
19 sheriff of the county in which conviction was had and such sheriff
20 shall thereupon forthwith remove such convicted person to a
21 Department of Correctional Services ~~adult correctional~~ facility of
22 the state and there deliver him or her, together with the warrant,
23 into the custody of the ~~warden~~ director who shall receive and
24 safely keep such ~~convict~~ convicted person within a Department of
25 Correctional Services ~~adult correctional~~ facility until the time of
26 execution or until otherwise ordered by competent authority.

27 Sec. 6. Section 29-2544, Reissue Revised Statutes of
28 Nebraska, is amended to read:

1 29-2544. It shall be the duty of the ~~warden of the~~
2 ~~Nebraska Penal and Correctional Complex~~ Director of Correctional
3 Services on receipt of such warrant, if the Supreme Court or a
4 judge thereof shall not have ordered a suspension of the execution,
5 and if the Board of Pardons shall not have commuted such sentence,
6 or granted a reprieve or pardon to such convict, to proceed at the
7 time named in the warrant to carry the sentence into execution in
8 the manner herein provided; and of the manner of his or her
9 executing the warrant, and of his or her doings thereon, he or she
10 shall forthwith make return to the clerk, who shall cause the
11 warrant and return to be recorded as a part of the records of the
12 case.

13 Sec. 7. Notwithstanding any other provision of law, the
14 assistance with, participation in, or performance of ancillary or
15 other functions pursuant to the administration of the substance or
16 substances described in subdivision (1)(a)(ii) or subsection (2) of
17 section 29-2532 in order to carry out the punishment of death as
18 provided by law shall not be construed to constitute the practice
19 of medicine and shall not be a violation of the Uniform Controlled
20 Substances Act or sections 71-2501 to 71-2512.

21 Sec. 8. Notwithstanding any other provision of law, any
22 pharmacist or pharmaceutical supplier is authorized to distribute
23 drugs to the Director of Correctional Services or his or her
24 designee, without prescription, in order to carry out the
25 punishment of death as provided by law.

26 Sec. 9. If any section in this act or any part of any
27 section is declared invalid or unconstitutional, the declaration
28 shall not affect the validity or constitutionality of the remaining

1 portions.

2 Sec. 10. Original sections 29-2532, 29-2533, 29-2542,
3 29-2543, and 29-2544, Reissue Revised Statutes of Nebraska, and
4 section 29-2524, Revised Statutes Supplement, 2004, are repealed.

5 Sec. 11. Since an emergency exists, this act takes
6 effect when passed and approved according to law.